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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,332	04/23/2001	Jerald A. Hammann	H238.101.101	4071

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EXAMINER	
VAN DOREN, BETH	

ART UNIT	PAPER NUMBER
3623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/840,332	HAMMANN, JERALD A.	
	Examiner	Art Unit	
	Beth Van Doren	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 March 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *31-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *31-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. The following is a non-final office action in response to communications received 03/27/2007. Claims 31-40 are pending in this application.

Response to Arguments

2. Applicant's arguments with respect to the rejections based on Ghaisas et al. (U.S. 2002/0198576) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new grounds of rejection is made in view of Chen et al. (U.S. 6,741,969).

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 31, 32, 33, 34, 35, and 36-40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 12, 17, 22, and 66-70 of copending Application No. 09/999,378. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only modifications

between the claims are the intended field of use and a wherein clause concerning the measure of an ability to produce and/or make additional quantities available.

Claim 31 of the current application recites "wherein the measure of an ability to produce and/or make available additional quantities [...] is derived from at least one human factor resource and is not a static ability" which is not recited in claim 1 of the copending application. First, both claims recite "an ability to make available additional quantities", and thus the fact that the measure is not static is obvious in light of this language because the "ability to make available additional quantities" is a dynamic quality. Therefore, the modification of the current application to include that the ability to make available additional quantities is not static is respectfully considered obvious to one of ordinary skill in the art at the time of the invention. Second, the limitation of the current application "wherein the measure of an ability to produce and/or make available additional quantities [...] is derived from at least one human factor resource" does not include any functional significance as to how or why the composite resource is related to at least one human factor resource. It is well known in the art that many composite resources are associated with a human factor, such as resources being related to human scheduling, calculation, and ability to manufacture, to name a few examples. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include an association between the composite resource and a human factor resource in order to more accurately measure the ability to make available the composite resource by considering all factors associated with this ability, such as human error. Examiner notes that the fact the claimed invention in the human factor resource industry is an intended field of use that has no functional significance on the claim, as currently recited.

Claims 32, 33, 34, and 35 of the current application and claims 7, 12, 17, and 22, respectively, of the copending application have the same, obvious modifications there between as claims 31 and 1. Therefore, although these conflicting claims are not identical, they are not patentably distinct from each other, as discussed above.

Claims 36-40 of the current application and claims 66-70, respectively, of the copending application are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 31-33, 35-38, and 40 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen et al. (U.S. 6,741,969).

As per claim 31, Chen et al. teaches a computer-based method for yield management, comprising:

accepting, via a computer, transaction parameter values for composite resources, wherein each composite resource has associated therewith at least a service location and at least one of a service date and a service time (See column 1, lines 20-30, column 2, lines 15-27, column 4,

lines 35-65, and column 8, lines 48-67, wherein the computer accepts values for the composite resources (a certificate for a table at a restaurant for food) specified by the service provider, including restrictions. The resource is associated with a restaurant (a location) and a time (Monday-Thursday, 4-7 PM)).

communicating at least a portion of the transaction parameter values for at least one composite resource to at least one potential user of the composite resource (See column 1, lines 20-30, column 2, lines 15-27, column 4, lines 35-65, and column 8, lines 48-67, wherien the values are transmitted to a potential user to entice purchase and/or bid. See also column 3, line65-column 4, line 5, column 6, lines 40-45, which disclose marketing and promotions in order to reduce excess capacity), the communication *attempting to modify* at least one of the demand for the at least one composite resource and the capacity of the at least one composite resource (See column 1, lines 20-30, column 5, lines 54-65, column 8, lines 20-35 and 49-60);

wherein the at least one service date and service time is a date and/or time measure indicating a present or future first date and/or time when the service is available (See column 1, lines 20-30, column 2, lines 15-27, column 4, lines 35-65, and column 8, lines 48-67, wherein a time (Monday-Thursday, 4-7 PM) indicates when the certificate or incentive or promotion can be used for service);

wherein the communication occurs prior to any first assignment of other concurrently-consumed and/or concurrently utilized composite resource to the at least one potential user (See column 1, lines 20-30, column 2, lines 15-27, column 4, lines 35-65, and column 8, lines 48-67, wherein the communication occurs prior to arriving at the restaurant).

Examiner notes that the fact the communication *attempts to modify* at least one of the demand for the at least one composite resource and the capacity of the at least one composite resource is regarded as intended use. A recitation directed to the manner in which a claim is intended to be used does not distinguish the claim from the prior art if the prior art has the capability to so perform. MPEP 2114 and Ex Parte Masham, 2 USPQ2d 1647 (1987). In this case, the act or step of communicating is not changed by what is intended to occur after the communication is delivered. Thus, "attempting to modify" is outside the scope of the positively recited steps. Thus, the following limitations are also outside the scope of the positively recited steps as they further limit the intended use:

wherein the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and/or time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time;

wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time is related to at least one human factor resource and is not a static ability; and

wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and/or time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and/or time period.

The claim does not specifically recite that any actual modification occurs; rather, the claims merely recites that values are accepted and communicated. Thus, these limitations are an intended use of the claimed invention and do not result in a difference that patentably distinguishes the claimed invention from the prior art. If the prior art is capable of performing the intended use, then it meets the claim.

Claim 32 is substantially similar to claim 31 and is therefore rejected using the same art and rationale set forth above. Examiner notes that this claim is a system claim. Therefore, the intended use does not result in a structural difference that patentably distinguishes the claimed invention from the prior art. In this case, since the prior art structure is capable of performing the intended use, it meets the claim, based on the same rationale set forth above.

Claim 33 recites substantially similar elements to claim 31. Therefore, teaches claim 33, as set forth above in the rejection of claim 31. Chen et al. further teaches a storage device storing a program and a processor connected to the storage device and controlled by the program, the processor operative with the program (See figure 1, column 10, lines 15-35). Examiner notes that this claim is a system claim. Therefore, the intended use does not result in a structural difference that patentably distinguishes the claimed invention from the prior art. In this case, since the prior art structure is capable of performing the intended use, it meets the claim, based on the same rationale set forth above.

Claim 35 recites substantially similar elements to claim 31. Therefore, teaches claim 33, as set forth above in the rejection of claim 31. Chen et al. further teaches receiving a responding communication from at least one user binding the at least one composite resource with specified transaction parameter values (See column 2, lines 15-25, column 4, lines 45-65, column 5, lines

10-30, wherein the user is bound to the values when he/she responds to the communications and secures the resource).

As per claims 36-38 and 40, Examiner notes that the fact the communication *attempts to modify* at least one of the demand for the at least one composite resource and the capacity of the at least one composite resource is regarded as intended use. A recitation directed to the manner in which a claim is intended to be used does not distinguish the claim from the prior art if the prior art has the capability to so perform. MPEP 2114 and Ex Parte Masham, 2 USPQ2d 1647 (1987). In this case, the act or step of communicating is not changed by what is intended to occur after the communication is delivered. Thus, "attempting to modify" is outside the scope of the positively recited steps. Thus, the following limitations are also outside the scope of the positively recited steps as they further limit the intended use:

wherein, when demand exceeds capacity for the at least one composite resource, the communication attempts to decrease the demand for the at least one composite resource and/or increase the capacity of the at least one composite resource.

The claim does not specifically recite that any actual modification occurs; rather, the claims merely recites that values are accepted and communicated. Thus, these limitations are an intended use of the claimed invention and do not result in a difference that patentably distinguishes the claimed invention from the prior art. If the prior art is capable of performing the intended use, then it meets the claim.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claim 34 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (U.S. 6,741,969).

Claim 34 is rejected using the same art and rationale set forth above in the rejection of claim 31. Chen et al. further discloses storing the data related to the individual resources and the associated composite resources (See column 1, lines 20-30, column 2, lines 15-27, column 4, lines 35-65, and column 8, lines 48-67, wherein the computer accepts values for the composite resources (a certificate for a table at a restaurant for food) specified by the service provider). However, Chen et al. does not expressly disclose constructing internal data structures which link each of the individual resources to associated composite resources and link each of the composite resources to associated individual resources.

Chen et al. discloses storing the data related to the individual resources and the associated composite resources. Relational databases are old and well known in the art and link stored data that is related together for more efficient storage and access speed. It would have been obvious to one of ordinary skill in the art at the time of the invention to include internal data structures that link each of the individual resources to associated composite resources and link each of the composite resources to associated individual resources in order to increaser the efficiency of storing and accessing the data by using relational database technology.

As per claim 39, Examiner notes that the fact the communication *attempts to modify* at least one of the demand for the at least one composite resource and the capacity of the at least one composite resource is regarded as intended use. A recitation directed to the manner in which a claim is intended to be used does not distinguish the claim from the prior art if the prior art has the capability to so perform. MPEP 2114 and Ex Parte Masham, 2 USPQ2d 1647 (1987). In this case, the act or step of communicating is not changed by what is intended to occur after the communication is delivered. Thus, "attempting to modify" is outside the scope of the positively recited steps. Thus, the following limitations are also outside the scope of the positively recited steps as they further limit the intended use:

indicating, when the demand for a composite resource exceeds the capacity of the composite resource, that the demand for the composite resource should be decreased and/or the capacity of the composite resource should be increased

The claim does not specifically recite that any actual modification occurs; rather, the claims merely recites that values are accepted and communicated. Thus, these limitations are an intended use of the claimed invention and do not result in a difference that patentably distinguishes the claimed invention from the prior art. If the prior art is capable of performing the intended use, then it meets the claim.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Barenbaum et al. (U.S. 2001/0039514) teaches managing excess capacity by communicating with a user and enticing the user to use the resource. This includes the use of yield management techniques and the communication of messages.

Marshall (U.S. 2003/0233278) discloses providing communications and incentives to cause a consumer to enter into a transaction.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

bvd

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June 8, 2007

Beth Van Doren
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